

CLAUSE H-3 – ADVANCE PAYMENT (August 2002)

- (a) Requirements for Payment. Advance payments may be made under this subcontract upon submission of properly certified invoices or vouchers by the Subcontractor, and approval by the SURA Subcontracting Officer. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed \$\_\_\_\_\_.
- (b) Repayment to JLab. At any time, the Subcontractor may repay all or part of the funds advanced by SURA. Whenever requested in writing to do so by the Subcontracting Officer, the Subcontractor shall repay to SURA any part of unliquidated advance payments considered by the Subcontracting Officer to exceed the Subcontractor's current requirements or the amount specified in Paragraph (a) of this Article.
- (c) Maximum Payment. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of \$\_\_\_\_\_ for work under this subcontract, SURA shall withhold further payments to the Subcontractor. On completion or termination of the subcontract, SURA shall deduct from the amount due to the Subcontractor all unliquidated advance payments and all interest charges payable. If previous payments to the Subcontractor exceed the amount due, the excess amount shall be paid to SURA on demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent price reductions under this subcontract, plus any increases that do not, in aggregate, exceed \$\_\_\_\_\_. The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Subcontracting Officer) incident to a termination for the convenience of SURA. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the subcontract shall resume.
- (d) Default.
  - (1) If any of the following events occur, SURA may, by written notice to the Subcontractor, withhold further payments on this subcontract:
    - (i) Termination of this subcontract for a fault of the Subcontractor.
    - (ii) A finding by the Subcontracting Officer that the Subcontractor has failed to: (a) observe any of the conditions of the advance payment terms; (b) comply with any material term of this subcontract; (c) make progress or maintain a financial condition adequate for performance of this subcontract; (d) limit inventory allocated to this subcontract to reasonable requirements; or (e) avoid delinquency in payment of taxes or the costs of performing this subcontract in the ordinary course of business.
    - (iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Subcontractor's property, for the institution of proceedings by or against the Subcontractor for bankruptcy, reorganization, arrangement, or liquidation.
    - (iv) The commission of an act of bankruptcy.
  - (2) If any of the events described in Subparagraph (d)(1) of this Article continue for thirty (30) days after the written notice to the Subcontractor, SURA may demand immediate repayment by the Subcontractor of the unliquidated balance of advance payments.
  - (3) SURA may take the above at its discretion and without limiting any other rights of SURA.
- (e) Representations and Warranties. The Subcontractor represents and warrants the following:
  - (1) None of the terms in this clause conflict with the authority under which the Subcontractor is doing business or with the provision of any existing indenture or subcontract of the Subcontractor.
  - (2) The Subcontractor has the power to enter into this subcontract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this subcontract.
  - (3) The assets of the Subcontractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Subcontractor. There is no current statement of claims under any subcontract or contract affected by these advance payment provisions.
  - (4) All information furnished by the Subcontractor to the Subcontracting Officer in connection with each request for advance payments is true and correct.
  - (5) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.